

No. _____

In the Court of Criminal Appeals of Texas

—◆—
No. 14-18-00205-CR

In the Court of Appeals for the
Fourteenth District of Texas at Houston

FILED
COURT OF CRIMINAL APPEALS
10/21/2020
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—◆—
No. 1471491

In the 178th District Court of Harris County, Texas

—◆—
SANTHY INTHALANGSY
Appellant

V.

THE STATE OF TEXAS
Appellee

—◆—
STATE'S PETITION FOR DISCRETIONARY REVIEW
—◆—

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ORAL ARGUMENT REQUESTED

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IDENTITY OF THE JUDGE, PARTIES, AND COUNSEL

Pursuant to Texas Rule of Appellate Procedure 38.2(a)(1)(A), a complete list of the names and addresses of all attorneys, and the names of all interested persons, is provided below so that the members of this Honorable Court may at once determine whether they are disqualified to serve or whether they should recuse themselves from participating in the decision of the case.

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TO THE HONORABLE JUDGES OF THE COURT OF CRIMINAL APPEALS OF TEXAS:
STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Texas Rule of Appellate Procedure 68.4(c), the State requests oral argument because the undersigned attorney believes that it may help this Court evaluate whether the Fourteenth Court of Appeals of Houston correctly considered and applied Texas Rules of Evidence 401, 402, 403, and 404(b) to ascertain whether the State's evidence concerning an extraneous murder was admissible. *See generally* TEX. R. APP. P. 68.4(c). The undersigned attorney welcomes the opportunity to present oral argument if this Court agrees that it would be useful.

STATEMENT OF THE CASE

The State charged Appellant by indictment with the capital felony offense of capital murder by intentionally causing the death of Kris (“Jimmy”) Maneerut while in the course of kidnapping or attempting to kidnap Sara Cassandra (“Cassie”) Nelson. (CR – 37);¹ *see* TEX. PENAL CODE ANN. § 19.03(a)(2); *see also* TEX. PENAL CODE ANN. § 19.02(b)(1). On March 12, 2018, a jury found Appellant guilty of the offense, as charged. (CR – 354); (RR VI - 99). On March 12, 2018, in accordance with the jury's verdict, the trial court sentenced Appellant in open

¹ The clerk's record consists of one volume, which will be referenced as (CR – [page number]). The court reporter's record consists of eight volumes from Appellant's trial, which will be referenced as (RR [I-VIII] – [page number]), as well as one volume from an abatement hearing. State's Exhibits admitted at trial will be cited as (SX [exhibit number]).

court to confinement in the Texas Department of Criminal Justice, Correctional Institutions Division, for life without the possibility of parole. (CR – 356-57); (RR VI – 101-02). The trial court entered an affirmative deadly weapon finding in the court’s written judgment of conviction and sentence, and certified Appellant’s right of appeal. (CR – 356-57, 359); (RR VI – 102). On March 12, 2018, Appellant timely filed written notice of appeal. (CR – 361-62). Appellant did not file a motion for new trial. *See* (CR – 370-71).

Pertinent to this Petition for Discretionary Review, Appellant complained in his second point of error on appeal that the trial court abused its discretion in admitting the State’s evidence concerning Cassie’s murder—an extraneous offense—in violation of Texas Rules of Evidence 401, 402, and 404(b). *See Inthalangsy v. State*, __S.W.3d__, No. 14-18-00205-CR, 2020 WL 5667158, at *4 (Tex. App.—Houston [14th Dist.] Sept. 24, 2020, pet. filed). Relatedly, Appellant contended in his third point of error that the trial court violated Texas Rule of Evidence 403 when the court admitted the extraneous-offense evidence of Cassie’s murder because the probative value of the evidence was substantially outweighed by the danger of unfair prejudice. *Id.* The Fourteenth Court of Appeals sustained these two points of error, concluded that the admission of the complained-of extraneous-offense evidence was harmful, reversed the trial court’s judgment, and remanded the case for a new trial. *Inthalangsy*, 2020 WL 5667158, at *7.

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STATEMENT OF PROCEDURAL HISTORY

On September 24, 2020, a panel of the Fourteenth Court of Appeals of Houston issued a published opinion finding that legally sufficient evidence supports Appellant's conviction for capital murder, but concluding that the trial court reversibly erred in admitting the State's extraneous-offense evidence concerning Cassie's murder. *See Inthalangsy*, 2020 WL 5667158, at *2-7; *see also* (App'x A). Accordingly, the panel reversed the judgment of the trial court and remanded the case for a new trial. *Id.* at *7. On the same date, Justice Tracy Christopher issued a published dissenting opinion agreeing with the majority that legally sufficient evidence supports Appellant's conviction, but disagreeing with the majority's analysis and conclusions regarding the admissibility of the State's extraneous-offense evidence. *See Inthalangsy*, 2020 WL 5667158, at *7-9 (Christopher, J., dissenting); *see also* (App'x B).

The State did not file a motion for rehearing or a motion for en banc reconsideration by the Fourteenth Court of Appeals. Rather, in accordance with Texas Rule of Appellate Procedure 68.2(a), the State now timely files this Petition for Discretionary Review within thirty days of the date that the Fourteenth Court of Appeals rendered its majority opinion. *See* TEX. R. APP. P. 68.2(a).

STATEMENT OF FACTS

On the night of May 1, 2015, and into the following morning, Lindapone (“Linda”) Phanprasa; Appellant, Linda’s boyfriend; and Amalinh Phouthavong held Sara Cassandra (“Cassie”) Nelson captive at Linda’s residence because they blamed Cassie—who had acted as an intermediary between her captors and other drug dealers—for a “[h]uge” drug deal that had gone awry and resulted in a loss of \$70,000. (RR III – 106-07, 111-12, 116); (RR IV – 73-75); *see* (SX 271); *Inthalangsy*, 2020 WL 5667158, at *1. When Cassie arranged with her captors to give them her father’s boat to cover the deficit, they released her on the afternoon of May 2, 2015. (RR III – 106-16, 132); *see* (SX 271); *Inthalangsy*, 2020 WL 5667158, at *1. Cassie returned to the garage apartment that she rented from Ryan Overton but, on the morning of May 6, 2015, Overton evicted her and her boyfriend, Kris (“Jimmy”) Maneerut for nonpayment of rent. (RR III – 104-06, 117-19, 128); *see Inthalangsy*, 2020 WL 5667158, at *1. Cassie and Jimmy collected some of their belongings, left the garage apartment at approximately 10:00 AM, and went to stay on property owned by Frank Garza, Jimmy’s friend, where they later slept in their cars. (RR III – 120, 167-68); *see Inthalangsy*, 2020 WL 5667158, at *1.

Also on May 6, 2015, Linda, Appellant, and Phouthavong began looking for Cassie again, apparently because of problems with the title to Cassie’s father’s

boat. (RR IV – 76); *see Inthalangsy*, 2020 WL 5667158, at *1. As part of their search, Linda, Appellant, and Phouthavong asked around the neighborhood for Cassie’s and Jimmy’s whereabouts; went by the garage apartment around 4:00 PM and asked Overton if he had seen them; and, around 10:30 PM, went to Jimmy’s parents’ house and asked for Cassie. (RR III – 121-24, 130-32); (RR IV – 76, 146-49, 160, 164); *see Inthalangsy*, 2020 WL 5667158, at *1.

On the morning of May 7, 2015, Garza discovered Jimmy and Cassie asleep in their cars and invited them inside his residence to sleep on the two sofas in his living room; Jimmy and Cassie accepted the offer. (RR III – 169-72); *see* (SX 137); *Inthalangsy*, 2020 WL 5667158, at *1. While Jimmy and Cassie slept, Garza received a phone call from Sylva (“Monk”) Sengshareun, another drug dealer whom Garza knew from “around the neighborhood.” (RR IV – 68, 78). During the call, Monk asked Garza if Jimmy and Cassie were at Garza’s home and told Garza that Linda wanted to talk to Cassie; when Garza answered that Jimmy and Cassie were at his house, Monk asked him not to alert Cassie and Jimmy that Linda was going to come over to talk to Cassie, and then offered to sell Garza some bars of Xanax—which Garza accepted. (RR III – 173-75, 204); (RR IV – 69-70). When Garza and Monk ended their call, Monk immediately called Linda, told her that Cassie was at Garza’s house, and agreed to lead Linda to the residence. (RR IV – 69-70, 79-80, 117); *see Inthalangsy*, 2020 WL 5667158, at *1.

When Monk arrived at Garza's house, he called Garza, who came out and got into Monk's vehicle. (RR III – 174-75); (RR IV – 84, 118-20). Linda, Appellant, and Phouthavong then pulled up in Linda's Lexus SUV and backed-in near Garza's fence line. (RR III – 178-79); (RR IV – 82-83, 119-20, 122). Appellant and Phouthavong then got out of Linda's vehicle; opened the rear hatch of the SUV and "rummage[ed] around"; made movements like they were putting guns in the back waistbands of their pants; and went into Garza's house. (RR III - 179-80); (RR IV – 86, 123). Very soon thereafter, Garza heard a single gunshot and saw Appellant and Phouthavong "escort" Cassie from the house to Linda's SUV—each of them walking on either side of her—as Cassie looked dazed and struggled not to cry. (RR III – 183-86, 210-13); (RR IV – 87-88, 124). Appellant and Phouthavong seated Cassie between them in the backseat of Linda's vehicle, and Linda drove them away. (RR III – 185-87, 212-13); (RR IV – 88-89); *see Inthalangsy*, 2020 WL 5667158, at *2.

Garza got out of Monk's car and returned to his house to find Jimmy "gasping" for breath and bleeding profusely onto the sofa and floor from a single gunshot wound to the middle of his face. (RR III – 188-90); *see* (SX 133-37); *Inthalangsy*, 2020 WL 5667158, at *2. Garza called 911 and emergency medical services personnel rushed Jimmy to a hospital via LifeFlight, but he died within minutes of his arrival. (RR III – 190-91, 226-27); *Id.*

Around 8:30 AM the following morning, May 8, 2015, fishermen discovered Cassie’s body—riddled with bullet holes, including two on her face—hidden in some underbrush beside the San Jacinto River and called the police. (RR IV – 227, 232, 237, 241-42); (RR V – 40-56, 178-81); *see* (SX 247, 251). The police later arrested Linda, Appellant, and Phouthavong for the offense of capital murder. (RR V – 196-99, 210); (RR VI – 29).

Appellant filed a motion in limine, seeking to prevent the State from adducing extraneous-offense evidence of Cassie’s murder on the grounds that the evidence was irrelevant, and that any probative value that the evidence did have was substantially outweighed by the danger of unfair prejudice. (CR – 301); (RR III – 18-23). The trial court held a pretrial hearing on Appellant’s motion in limine, among other matters, overruled Appellant’s objections, and explained that the State’s proposed extraneous-offense evidence would be admissible as “part of the operative facts of the [charged] offense....” (RR III – 23-24).

GROUND FOR REVIEW

1. The Fourteenth Court of Appeals misapplied Texas Rules of Evidence 401 and 402 by disregarding evidence connecting Appellant to Cassie’s murder and, thus, erroneously concluding that the extraneous-offense evidence of Cassie’s murder was irrelevant.
2. The Fourteenth Court of Appeals erred by failing to consider whether the extraneous-offense evidence of Cassie’s murder was admissible under Texas Rule of Evidence 404(b) for the non-character-conformity purposes of: demonstrating that Appellant restrained Cassie without her consent; showing

Appellant's intent to use deadly force against Cassie to prevent her liberation; and providing same-transaction contextual evidence.

3. The Fourteenth Court of Appeals failed to conduct a meaningful assessment of whether, per Texas Rule of Evidence 403, the probative value of the extraneous-offense evidence of Cassie's murder was substantially outweighed by the danger of unfair prejudice.

REASONS FOR GRANTING REVIEW

The Court should grant this Petition for Discretionary Review pursuant to Texas Rules of Appellate Procedure 66.3(d), (e), and (f) because: the Fourteenth Court of Appeals has misconstrued Texas Rules of Evidence 401, 402, 403, and 404(b); the justices of the Fourteenth Court of Appeals have disagreed on material questions of law necessary to that court's decision, as evinced by Justice Christopher's published dissenting opinion; and the Fourteenth Court of Appeals has so far departed from the accepted and usual course of judicial proceedings as to call upon this Court to exercise this Court's power of supervision. *See generally* TEX. R. APP. P. 66.3(d); TEX. R. APP. P. 66.3(e); TEX. R. APP. P. 66.3(f).

ARGUMENT FOR FIRST GROUND FOR REVIEW

The Fourteenth Court of Appeals misapplied Texas Rules of Evidence 401 and 402 by disregarding evidence connecting Appellant to Cassie's murder and, thus, erroneously concluding that the extraneous-offense evidence of Cassie's murder was irrelevant.

Texas Rule of Evidence 402 provides the basic tenet that relevant evidence is generally admissible, while irrelevant evidence is inadmissible. TEX. R. EVID.

402. Rule of Evidence 401 explains that “[e]vidence is relevant if: (a) it has *any* tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.” TEX. R. EVID. 401 (emphasis added). Consistent with the plain language of this rule, the United State Supreme Court and this Court have expressed that there is a “low threshold for relevance.” *See, e.g., Tennard v. Dretke*, 542 U.S. 274, 284-85 (2004) (explaining that there is a “low threshold for relevance” regarding mitigating evidence, as with other evidence); *Cruz-Garcia v. State*, No. AP-77,025, 2015 WL 6528727, at *19 (Tex. Crim. App. Oct. 28, 2015) (not designated for publication) (discussing “the low threshold for relevance imposed by Rule 401....”); *Ex parte Smith*, 309 S.W.3d 53, 56 (Tex. Crim. App. 2010).

The Fourteenth Court of Appeals conceded that “it is easy to imagine a connection between Appellant’s conduct and Cassie’s violent death[,]” but nonetheless determined that the State’s extraneous-offense evidence of Cassie’s murder was entirely irrelevant to the State’s case-in-chief because of “[t]he State’s inability to prove Appellant participated in Cassie’s death beyond a reasonable doubt....” *Inthalangsy*, 2020 WL 5667158, at *4. In doing so, though, the appellate court disregarded the low threshold of Rule 401, failed to acknowledge the ample circumstantial evidence that connects Appellant to the extraneous murder, and failed to apply the proper, deferential standard of review when

considering the evidence. *See Inthalangsy*, 2020 WL 5667158, at *8 (Christopher, J., dissenting) (explaining that “[t]he majority achieves [the] holding [that Appellant is not connected to Cassie’s murder] by not crediting the reasonable inferences that may be drawn from the circumstantial evidence, in direct contravention of the standard of review.”).

As Justice Christopher observed in her dissenting opinion, the record evinces that: Appellant kidnapped Cassie twice within a span of only a few days; Cassie expressed to Overton during the first kidnapping that she feared that her captors, including Appellant, would kill her; Appellant and Phouthavong were seen with at least one gun when they searched for Cassie between the first and second kidnappings, before Monk tipped-off Linda as to Cassie’s and Jimmy’s whereabouts; Appellant or Phouthavong shot Jimmy in the face right in front of Cassie, immediately before they kidnapped her for the second time; Cassie was seen alive for the last time when Appellant and Phouthavong “escorted” her from Garza’s house after they shot Jimmy and drove away with her in Linda’s vehicle; Cassie’s body was found dumped and hidden near a river less than 24 hours after Jimmy’s murder; Cassie was killed approximately 12 to 24 hours before her body was discovered, placing her murder very soon after Jimmy’s murder and when Appellant abducted her; Cassie had also been shot to death, including twice in her face, like Jimmy; and two firearms were used to commit the murders, a .40-caliber

pistol to shoot Jimmy and a .38-caliber or 9mm pistol to shoot Cassie a short time later, which suggests that there were two shooters during this crime spree. *See* (RR III – 106-14, 121-23, 132-34, 179-87); (RR IV – 12-30, 75-76, 86-89, 123, 146-49, 159-60, 227-29, 241-42); (RR V – 40-48, 52, 55-57); (SX 241, 296); *Inthalangsy*, 2020 WL 5667158, at *8 (Christopher, J., dissenting).

Given that any reasonable factfinder could deduce from this evidence that Appellant is culpable for Cassie’s murder as either a principal or a party, and that, as discussed more fully in the State’s second ground for review, the extraneous-offense evidence of Cassie’s murder was probative of essential elements of the charged offense and provided same-transaction contextual evidence, the appellate court erred in holding that the extraneous-offense evidence was irrelevant and inadmissible, contrary to Rules 401 and 402. *See Inthalangsy*, 2020 WL 5667158, at *7-8 (Christopher, J., dissenting) (citing *Rogers v. State*, 853 S.W.2d 29, 32-33 (Tex. Crim. App. 1993) (stating that a reviewing court should not superimpose its own judgment over the judgment of the trial court when deciding whether extraneous-offense evidence is relevant)).

This Court should sustain the State’s first ground for review.

ARGUMENT FOR SECOND GROUND FOR REVIEW

The Fourteenth Court of Appeals erred by failing to consider whether the extraneous-offense evidence of Cassie’s murder was admissible under Texas Rule of Evidence 404(b)(2) for the non-character-conformity purposes of: demonstrating that Appellant restrained Cassie without her consent; showing Appellant’s intent to use deadly force against Cassie to prevent her liberation; and providing same-transaction contextual evidence.

As Justice Christopher notes in her dissenting opinion, the Fourteenth Court of Appeals “start[ed] on the wrong foot by not beginning its analysis with Rule 404 of the Texas Rules of Evidence.” *Inthalangsy*, 2020 WL 5667158, at *7. In fact, the majority does not discuss Rule 404(b) in its opinion at all; rather, as stated above, the majority concluded—erroneously—that the extraneous-offense evidence was wholly irrelevant because Appellant was not adequately connected to Cassie’s murder and then jumped to a harm analysis. *See Inthalangsy*, 2020 WL 5667158, at *4-5, n.2 (“[W]e...begin with binding authority that dictates when extraneous offenses may be received into evidence and need not go further because our analysis reveals the evidence is not relevant.”). However, because any reasonable factfinder could infer from the circumstantial evidence adduced that Appellant is criminally responsible for and connected to Cassie’s murder, the next step in an appropriate analysis is to assess whether the extraneous-offense evidence pertaining to that murder is admissible for some non-character-conformity purpose, per Rule 404(b).

Rule 404(b)(1) establishes that the general rule that evidence of a person's crime, wrong, or other act is not admissible to prove a person's character in order to show that, on a particular occasion, the person acted in conformity with their character. TEX. R. EVID. 404(b)(1). Rule 404(b)(2) provides an exception to the general prohibition in Subsection (b)(1) when the extraneous-offense evidence is offered for "another purpose[,]" apart from establishing character-conformity, such as proving motive, intent, preparation, plan, knowledge, identity, absence or mistake, or lack of accident. TEX. R. EVID. 404(b)(2). In addition to these enumerated non-character-conformity purposes, this Court has long recognized that extraneous-offense evidence "may also be admissible as same-transaction contextual evidence where 'several crimes are intermixed, or blended with one another, or connected so that they form an indivisible criminal transaction, and full proof...of any one of them cannot be given without showing the others.'" *Devoe v. State*, 354 S.W.3d 457, 469 (Tex. Crim. App. 2011) (quoting *Wyatt v. State*, 23 S.W.3d 18, 25 (Tex. Crim. App. 2000)); see *Rogers*, 853 S.W.2d at 33; *Mayes v. State*, 816 S.W.2d 79, 86 (Tex. Crim. App. 1991). This is so because same-transaction contextual evidence provides background information "to show the context in which the criminal act occurred[,]"...under the reasoning that events do not occur in a vacuum and that the jury has a right to hear what occurred immediately prior to and subsequent to the commission of the act so that they may

realistically evaluate the evidence.” *Mayes*, 816 S.W.2d at 86 (quoting *Albrecht v. State*, 486 S.W.2d 97, 100 (Tex. Crim. App. 1972)).

As Justice Christopher discussed in her dissenting opinion, the extraneous-offense evidence of Cassie’s murder was admissible for several non-character-conformity purposes. First, Cassie’s extraneous murder tended to prove that Appellant restrained Cassie without her consent when he and Phouthavong escorted her away from Garza’s house, which was an essential element of the charged offense and a contested issue at trial. *See* (CR – 331-32); *Inthalangsy*, 2020 WL 5667158, at *7 (Christopher, J., dissenting). Second, Cassie’s extraneous murder also tended to establish that Appellant intended to prevent Cassie’s liberation by using deadly force against her, which was another essential element of the State’s case-in-chief. *See* (CR – 332); *Inthalangsy*, 2020 WL 5667158, at *7 (Christopher, J., dissenting).

And third, because the evidence demonstrated that Jimmy’s murder was intertwined with Cassie’s kidnapping and extraneous murder, which occurred soon after her kidnapping, the trial court could have reasonably determined that the extraneous-offense evidence was admissible as same-transaction contextual evidence to enable the jury to realistically evaluate all of the circumstances and facts developed at trial. *Inthalangsy*, 2020 WL 5667158, at *7 (Christopher, J., dissenting); *see Camacho v. State*, 864 S.W.2d 524, 531-32 (Tex. Crim. App.

1993) (holding that the trial court did not abuse its discretion by admitting evidence of extraneous murders and kidnappings because the evidence helped to establish the defendant's intent and imparted "information essential to understanding the context and circumstances of events which, although legally separate offenses, [were] blended or interwoven."); *see also Prible v. State*, 175 S.W.3d 724, 731-32 (Tex. Crim. App. 2005) (finding that the trial court did not err in admitting, as same-transaction contextual evidence, extraneous-offense evidence that the victims' three young children were killed when the defendant shot the victims and then set fire to one victim's body and the couch she was laying on).

Accordingly, because the record connects Appellant to Cassie's murder and, thus, establishes that the extraneous-offense evidence of Cassie's murder was relevant, the Fourteenth Court of Appeals erred by failing to consider whether that evidence was admissible under Rule 404(b) for any or all of the above-described non-character-conformity purposes.

This Court should sustain the State's second ground for review.

ARGUMENT FOR THIRD GROUND FOR REVIEW

The Fourteenth Court of Appeals failed to conduct a meaningful assessment of whether, per Texas Rule of Evidence 403, the probative value of the extraneous-offense evidence of Cassie's murder was substantially outweighed by the danger of unfair prejudice.

Similar to the State's second ground for review, because the Fourteenth Court of Appeals erroneously determined from the outset that insufficient evidence connects Appellant to Cassie's murder to make that extraneous crime relevant to the charged offense, the appellate court failed to conduct any meaningful assessment of whether the probative value of the extraneous-offense evidence was substantially outweighed by the danger of unfair prejudice. *See Inthalangsy*, 2020 WL 5667158, at *5 (finding that the prejudice from the evidence of Cassie's death "was unfair and substantially outweighed the non-existent probative value of Cassie's death relative to the charge alleged and the elements thereof). However, because, again, any reasonable factfinder could conclude that Appellant is connected to Cassie's murder, the appellate court should have engaged in a thorough Rule 403 analysis.

Rule 403 permits the trial court to exclude relevant evidence if the court determines that the probative value of that evidence is substantially outweighed by the danger of unfair prejudice. TEX. R. EVID. 403. A trial court undertaking a Rule 403 analysis must balance the following considerations: (1) the inherent probative

force of the proffered evidence; and (2) the strength of the proponent's need for the evidence to prove a fact at issue, including whether the proponent has access to other probative evidence which could establish the disputed fact; against (3) any tendency of the evidence to suggest decision on an improper basis; (4) any tendency of the evidence to confuse or distract the factfinder from the main issues in the case; (5) the likelihood that the jury would give the evidence undue weight, or that the evidence would impress upon the jury "in some irrational but nevertheless indelible way"; and (6) the likelihood that presentation of the proffered evidence would consume an inordinate amount of time or merely repeat evidence already admitted. *Gigliobianco v. State*, 210 S.W.3d 637, 641-42 (Tex. Crim. App. 2006).

Justice Christopher correctly explains in her dissenting opinion that, given the record in this case, the trial court could have reasonably determined, first, that the probative value of the extraneous-offense evidence was high, and then that that high probative value far outweighed the danger of unfair prejudice. *See Inthalangsy*, 2020 WL 5667158, at *8 (Christopher, J., dissenting). Specifically, the probative value of the evidence of Cassie's extraneous murder was high because, as described previously, the evidence was important to establishing the elements of the underlying kidnapping that Appellant restrained Cassie without her consent, and that Appellant intended to prevent Cassie's liberation by using deadly

force against her. This is particularly so because, as Justice Christopher notes, “the limited eyewitness testimony did not establish any obvious uses of force during the initial stages of the kidnapping[,]” and, thus, “[t]he extraneous murder was...important to establishing that Cassie was still taken against her will.” *Inthalangsy*, 2020 WL 5667158, at *8 (Christopher, J., dissenting).

Further, the trial court could have reasonably determined that there was little danger that the extraneous-offense evidence would distract or confuse the jury, or consume an inordinate amount of time, given that Jimmy’s and Cassie’s murders were inextricably intertwined, and that the State called relatively few witnesses and proffered only a limited amount of photographs to prove the extraneous murder. *See* (RR IV – 227-42); (RR V – 12-27, 33-58); *Inthalangsy*, 2020 WL 5667158, at *9 (Christopher, J., dissenting). Relatedly, the trial court could also have concluded that the amount and nature of the extraneous-offense evidence would not affect the jury in an irrational way, given that the State presented relatively few, non-inflammatory photographs of Cassie’s body and where it was discovered, and that the State refrained from offering graphic, close-up photographs of Cassie’s body or face, or photographs from her autopsy. *See* (RR III – 24-25); (SX 242-47, 251); *Inthalangsy*, 2020 WL 5667158, at *9 (Christopher, J., dissenting).

Hence, in light of these considerations and the record, the trial court did not abuse its discretion or violate Rule 403 in admitting the extraneous-offense

evidence of Cassie's murder, and the Fourteenth Court of Appeals erred in concluding otherwise.

This Court should sustain the State's third ground for review.

PRAYER FOR RELIEF

The State respectfully asks this Court to grant this Petition for Discretionary Review, permit oral argument, and, after reviewing this case on the merits, reverse the decision of the Fourteenth Court of Appeals and reinstate the trial court's judgment of conviction and sentence.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Texas Rule of Appellate Procedure 9.4(i), the undersigned attorney certifies that the number of words in the foregoing computer-generated document is 3,399, based upon the representation provided by the word processing program that was used to create the document, and excluding the portions of the document identified in Rule 9.4(i)(1).

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CERTIFICATE OF SERVICE

This is to certify that the undersigned counsel has directed the e-filing system eFile.TXCourts.gov to serve a true and correct copy of the foregoing document upon the following parties on October 20, 2020, at the following e-mail addresses, through the electronic service system provided by eFile.TXCourts.gov:

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APPENDIX A

Majority opinion, Justice Meagan Hassan, Fourteenth Court of Appeals

Inthalangsy v. State, __S.W.3d__, No. 14-18-00205-CR, 2020 WL 5667158 (Tex. App.—Houston [14th Dist.] Sept. 24, 2020, pet. filed).

**Reversed and Remanded and Majority and Dissenting Opinions filed
September 24, 2020.**



In The
Fourteenth Court of Appeals

NO. 14-18-00205-CR

SANTHY INTHALANGSY, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 178th District Court
Harris County, Texas
Trial Court Cause No. 1471491**

MAJORITY OPINION

In this appeal from a conviction for capital murder, Appellant Santhy Inthalangsy argues that he is entitled to an acquittal because the evidence is insufficient to support the conviction. He further argues in the alternative that, even if the evidence were sufficient, he should still receive a new trial because the trial court abused its discretion by admitting certain evidence. For the reasons below, we reverse the trial court's judgment and remand for a new trial.

BACKGROUND

A woman nicknamed Cassie was kidnapped twice in a single week. During the first kidnapping, Cassie retained the use of her cellphone, and she texted her landlord saying that she was “being held hostage” because of a “huge deal gone bad.” Cassie indicated that she had been trying to facilitate a large transaction between drug dealers, but that someone had stolen the money, which belonged to her captors. Cassie did not identify her captors by name in her text messages, but she identified the street address where they were keeping her. The residence at that street address was occupied by Appellant’s girlfriend, Linda.

The captors released Cassie after she arranged to give them her father’s boat to compensate them for their loss. Upon her release, Cassie went to her garage apartment, where her landlord immediately evicted her and her boyfriend, Jimmy.

Cassie then followed Jimmy to a house belonging to his friend, Frank, where Jimmy had been working as a mechanic. While on Frank’s property, Cassie and Jimmy slept overnight in their separate cars, until Frank discovered them one morning and invited them inside to sleep on the couch.

As Cassie and Jimmy stayed with Frank, Cassie’s captors renewed their search for her, apparently due to title problems with the boat. The captors first went to Cassie’s garage apartment, where her landlord saw what he believed to be three Asian men going through the belongings that Cassie had left behind. Then they went to the house belonging to Jimmy’s parents, where they were identified as two Asian men (Appellant and his associate Amalinh) and one Asian woman (Linda).

The captors were eventually tipped off by a man nicknamed Monk, another drug dealer in the area who knew the individuals involved and who knew about Linda’s desire to track down Cassie. Monk called Frank one morning and asked if

Frank knew Cassie's whereabouts. When Frank said that Cassie was staying with him, Monk told Frank to not mention their conversation to anyone. Monk then told Linda where she could find Cassie.

Linda gathered Appellant and Amalinh, and together they drove out to Frank's neighborhood, but they could not locate Frank's house. Linda contacted Monk, who lived nearby, and he agreed to show them the way.

Monk drove in his own car and, as he approached Frank's house, he called Frank and told Frank to meet him in his car, where he said that he would provide Frank with some drugs. As instructed, Frank walked outside to Monk's car, which was parked on the street, and he got inside. Linda then pulled into Frank's driveway, as Frank watched from a distance.

Frank saw Appellant and Amalinh exit Linda's vehicle, rummage briefly through her trunk, and then walk towards his house. Shortly after they were inside, Frank heard a loud sound that resembled a gunshot. Then he saw Cassie being escorted out of the house with Appellant and Amalinh on either side of her. Cassie and her captors got into the backseat of Linda's vehicle, with Cassie in the middle, and then Linda drove away.

Frank exited Monk's vehicle after Linda left. When Frank returned to his house, he found Jimmy gasping for air and bleeding from a single gunshot wound to the face. Frank called 911 and Jimmy was rushed to a local hospital, but Jimmy succumbed to his injuries. The next day, Cassie's body was found near an area river, having been shot multiple times.

Appellant was soon charged with Jimmy's capital murder, with the aggravating element being that the murder occurred during the course of Cassie's second kidnapping. Appellant pleaded not guilty, but a jury found otherwise and,

because the prosecution did not seek the death penalty, the trial court sentenced him to a mandatory term of life imprisonment without the possibility of parole.

ANALYSIS

Appellant raises four issues on appeal:

1. the evidence is legally insufficient to support his conviction for capital murder;¹
2. the trial court abused its discretion by admitting evidence of Cassie's extraneous murder;
3. the trial court abused its discretion by admitting certain hearsay statements; and
4. the trial court abused its discretion by denying Appellant's motion for a continuance.

Beginning with Appellant's first issue, we conclude that his conviction is supported by legally sufficient evidence. With respect to the second issue, we hold the trial court abused its discretion by admitting evidence of Cassie's murder. Because this error affected Appellant's substantial rights, we reverse the trial court's judgment and remand for a new trial. *See, e.g., Veliz v. State*, 474 S.W.3d 354, 367-68 (Tex. App.—Houston [14th Dist.] 2015, pet. ref'd). We do not reach Appellant's other issues on appeal.

I. Sufficiency of the Evidence

In a sufficiency challenge, a reviewing court must determine whether a rational trier of fact could have found the essential elements of an offense beyond a

¹ Appellant raises the sufficiency challenge as the final issue in his brief, but we address that issue first because, if meritorious, it would afford him greater relief than his other issues. *See Roberson v. State*, 810 S.W.2d 224, 225 (Tex. Crim. App. 1991) (per curiam) (en banc) (holding that the court of appeals erred by remanding a case on a claim of ineffective assistance of counsel without ever addressing a sufficiency challenge, which could have entitled the defendant to a rendition of judgment).

reasonable doubt. *See Temple v. State*, 390 S.W.3d 341, 360 (Tex. Crim. App. 2013). The offense here was capital murder, which meant that the jury was required to find the following essential elements: (1) Appellant intentionally murdered Jimmy, and (2) Appellant committed Jimmy’s murder in the course of committing Cassie’s kidnapping. *See Tex. Penal Code Ann. § 19.03(a)(2)*. When deciding whether these elements were proven beyond a reasonable doubt, we consider all of the evidence in the light most favorable to the jury’s decision. *See Robinson v. State*, 466 S.W.3d 166, 172 (Tex. Crim. App. 2015).

For the first element of murder, the prosecution had to prove that Appellant intentionally caused Jimmy’s death. *See Tex. Penal Code Ann. § 19.02(b)(1)*. There was conclusive evidence that Jimmy died from a single gunshot wound to the face, but there was no conclusive evidence as to who fired the shot that killed him. Nevertheless, the jury could have reasonably found that the shot was fired either by Appellant or his associate Amalinh. The evidence showed that both men entered Frank’s house at the same time and that a gunshot was heard shortly thereafter. Even if Amalinh was the actual shooter, Appellant was still charged under the law of parties, and the jury could have reasonably determined that Appellant at least encouraged or aided Amalinh in the commission of Jimmy’s murder. *See id.* § 7.02(a)(2) (providing that a person is criminally responsible as a party if the person encourages or aids another in the commission of an offense); *Anderson v. State*, 416 S.W.3d 884, 889 (Tex. Crim. App. 2013) (holding that the conviction must be upheld if the evidence is legally sufficient on any theory authorized by the jury charge). The jury could have also inferred that the murder was intentional because death is the natural consequence of a gunshot to the face. *See Tex. Penal Code Ann. § 6.03(a)*.

For the second element of kidnapping, the prosecution had to prove that Appellant intentionally or knowingly “abducted” Cassie. *See id.* § 20.03(a). The

word “abduct” has a statutory definition, meaning “to restrain a person with intent to prevent [her] liberation by secreting or holding [her] in a place where [she] is not likely to be found; or using or threatening to use deadly force.” *See id.* § 20.01(2). The word “restrain” also has a statutory definition, meaning “to restrict a person’s movements without consent, so as to interfere substantially with the person’s liberty, by moving the person from one place to another or by confining the person.” *See id.* § 20.01(1).

The evidence showed that Cassie was escorted from Frank’s house into Linda’s car, with Appellant and Amalinh on either side of her. From this evidence, the jury could have reasonably determined that Appellant restrained Cassie without her consent because the escort occurred immediately after Jimmy was shot. *See id.* § 20.01(1)(A) (providing that restraint is “without consent” if it is accomplished by force, intimidation, or deception). Similarly, the jury could have reasonably determined that, during Cassie’s restraint, Appellant formed the intent to prevent her liberation by taking her, with the assistance of Linda, to a place where Cassie was not likely to be found and by using deadly force against her. *See Laster v. State*, 275 S.W.3d 512, 521 (Tex. Crim. App. 2009).

Appellant responds that the evidence is insufficient to establish a kidnapping because Frank affirmatively testified that Cassie appeared “nonchalant” when she left Frank’s house. Appellant also refers to other testimony that neither he nor Amalinh were seen with any weapons, and that they did not touch Cassie as they escorted her from Frank’s house to Linda’s car. Based on this evidence, Appellant suggests that a rational jury could not make a finding that Cassie was restrained without her consent.

Appellant has failed to view the evidence in the light most favorable to the verdict. There was testimony from Monk, who was also present at the scene, that

Cassie looked “like she was fixing to cry.” Considering the other evidence that Jimmy had just been shot inside the home where she was staying, the jury could have reasonably concluded that Appellant and Amalinh used force and intimidation to restrain Cassie without her consent, even if they did not actually touch her with their hands.

Appellant contends next that there is insufficient evidence to show that Cassie’s kidnapping was intentional. Appellant suggests in his brief that the kidnapping may have just been an “afterthought,” but there was an abundance of evidence to the contrary. Intent can be inferred from the circumstances, and there was evidence that Appellant (along with Amalinh and Linda) was searching for Cassie at her garage apartment and at the house belonging to Jimmy’s parents. When combined with the other evidence that Cassie had previously been kidnapped earlier in the week by the same parties, the jury could have reasonably concluded that Cassie’s subsequent kidnapping was also performed intentionally.

In one last point, Appellant contends that he could not be convicted of capital murder because there is no evidence that he committed Jimmy’s murder “in the course of” committing Cassie’s kidnapping, as required by the relevant statute. *See* Tex. Penal Code Ann. § 19.03(a)(2). According to Appellant, Jimmy’s murder was already completed before Cassie’s kidnapping began. This argument overlooks Frank’s testimony that when he returned to his house after Cassie was escorted away, he found that Jimmy was still alive and gasping for air, which means that the murder had not yet been completed. Because of this testimony, the jury could have reasonably found that Appellant intentionally murdered Jimmy in the course of committing Cassie’s kidnapping. *See Robertson v. State*, 871 S.W.2d 701, 705 (Tex. Crim. App. 1993) (holding that a murder occurs “in the course of” committing another offense if the murder occurs “in an attempt to commit, during the

commission, or in the immediate flight after the attempt or commission of the offense”); *see also Santellan v. State*, 939 S.W.2d 155, 163-64 (Tex. Crim. App. 1997) (en banc) (holding that the evidence was sufficient to support a conviction for capital murder where there was testimony that the defendant restrained and drove the victim away after the victim was shot in the head but during a time when the victim “may have still been alive”).

We conclude that the evidence is legally sufficient to support every essential element of the offense beyond a reasonable doubt.

II. Evidence of Cassie’s Extraneous Murder

In his next issue, Appellant complains about the evidence of Cassie’s extraneous murder, which was admitted over his timely objection. Specifically, Appellant asserts (1) this evidence is irrelevant with respect to the charged offense, and (2) even if relevant, this evidence was substantially outweighed by the danger of unfair prejudice.

A. The Trial Court Erred by Admitting Evidence of Cassie’s Murder.

We review the trial court’s decision to admit evidence for an abuse of discretion. *See Page v. State*, 137 S.W.3d 75, 78 (Tex. Crim. App. 2004). “[T]he primary purpose of rules of evidence is to narrow the evidence offered at the trial to those matters which have logical and probative value in determining the guilt or innocence of the accused. Thus, to the extent that the law of evidence precludes decisions based on illogical conclusions, it aids the administration of justice.” Barbara E. Bergman, Nancy Hollander & Theresa M. Duncan, *Wharton’s Criminal Evidence* § 1:2 (15th ed.); *see also* Tex. R. Evid. 102. In furtherance of this objective, Texas Rule of Evidence 402 prohibits the introduction of irrelevant evidence. *See* Tex. R. Evid. 402.

Appellant was charged with capital murder of Jimmy; this charge required the State to prove Appellant both (1) intentionally murdered Jimmy and (2) did so in the course of committing Cassie’s kidnapping. *See* Tex. Penal Code Ann. § 19.03(a)(2). To prove kidnapping, the State had to prove Appellant intentionally or knowingly abducted Cassie. *See id.* § 20.03(a). Abduction includes (in relevant part) “using or threatening to use deadly force.” *Id.* § 20.01(2). The State did not prove Appellant killed Cassie; instead, it introduced other pejorative evidence against him (including evidence tending to prove he used deadly force against Jimmy) that insufficiently connected him to her death.

Extraneous offenses:

may not be received into evidence unless and until there is a clear showing that: 1) the evidence of the extraneous offense is material, *i.e.*, going to an element of the offense charged in the indictment or information, 2) the accused participated in the extraneous transaction being offered into evidence, and 3) the relevancy to a material issue outweighs its inflammatory or prejudicial potential[.]

McCann v. State, 606 S.W.2d 897, 901 (Tex. Crim. App. [Panel Op.] 1980), *holding modified by Harrell v. State*, 884 S.W.2d 154 (Tex. Crim. App. 1994) (en banc) (citing *Murphy v. State*, 587 S.W.2d 718, 721 (Tex. Crim. App. [Panel Op.] 1979) and *Ruiz v. State*, 579 S.W.2d 206 (Tex. Crim. App. [Panel Op.] 1979)).² Clear proof means “proof beyond a reasonable doubt.” *Harrell*, 884 S.W.2d at 158.³ The State’s

² Contrary to the dissent’s assertion that we are “start[ing] off on the wrong foot by not beginning [our] analysis with Rule 404 of the Texas Rules of Evidence,” we instead begin with binding authority that dictates when extraneous offenses may be received into evidence and need not go further because our analysis reveals the evidence is not relevant. While we acknowledge that appellate courts should not superimpose their judgment concerning relevance in all cases (*see generally Montgomery v. State*, 810 S.W.2d 372, 390-92 (Tex. Crim. App. 1990) (en banc)), the test itself requires examining relevance then balancing that determined relevance against “its inflammatory or prejudicial potential.” We are not tasked with examining properly preserved relevance objections only to be precluded from reaching a conclusion it is irrelevant as a matter of law.

³ *See also Harrell*, 884 S.W.2d at 166 (Clinton, J., concurring) (citing *Williams v. State*, 41

inability to prove Appellant participated in Cassie’s death beyond a reasonable doubt made the evidence thereof prejudicial and inadmissible. *See Miles v. State*, 468 S.W.3d 719, 724 (Tex. App.—Houston [14th Dist.] 2015), *aff’d on other grounds*, 506 S.W.3d 485 (Tex. Crim. App. 2016) (“To determine whether evidence is relevant in a particular case, courts must ‘examine the purpose for which the evidence is being introduced.’ . . . There must be a ‘direct or logical connection between the actual evidence and the proposition sought to be proved.’”) (quoting *Layton v. State*, 280 S.W.3d 235, 240 (Tex. Crim. App. 2009)).

Cassie’s death had no logical tendency to make a fact of consequence concerning her kidnapping more or less probable than it would have been without her death, particularly because there is no sufficient evidence connecting Appellant

S.W. 645, 648 (Tex. Crim. App. 1897) (“before evidence of an extraneous crime can be offered, some cogent evidence should be adduced of appellant’s connection therewith . . .”); *Walton v. State*, 55 S.W. 566, 567 (Tex. Crim. App. 1900) (“there should have been some testimony indicating with a reasonable degree of certainty that appellant was guilty” of the extraneous offense); *Denton v. State*, 60 S.W. 670, 672 (Tex. Crim. App. 1901) (same as *Walton*); *Glenn v. State*, 76 S.W. 757, 758 (Tex. Crim. App. 1903) (before evidence of extraneous misconduct can be admitted, “there must be pertinent testimony tending to show that appellant” is the one who committed it, citing *Williams*); *Fountain v. State*, 241 S.W. 489, 491 (Tex. Crim. App. 1921) (that accused committed extraneous offense “must be shown . . . with reasonable certainty”); *Hooks v. State*, 261 S.W. 1053, 1054-55 (Tex. Crim. App. 1923) (same as *Glenn*); *Wells v. State*, 42 S.W.2d 607, 608 (Tex. Crim. App. 1931) (that accused perpetrated extraneous offense must be “satisfactorily shown” to justify admissibility); *Shepherd v. State*, 158 S.W.2d 1010, 1011 (Tex. Crim. App. 1942) (same as *Wells*); *Clark v. State*, 165 S.W.2d 747, 748 (Tex. Crim. App. 1942) (that accused perpetrated extraneous offense must be “shown”); *Carmean v. State*, 290 S.W.2d 240 (Tex. Crim. App. 1956) (citing, at one point or another, all of the above); *Tomlinson v. State*, 422 S.W.2d 474, 474 (Tex. Crim. App. 1967) (State must be “prepared to prove that the accused committed” extraneous misconduct); *Landers v. State*, 519 S.W.2d 115, 118 (Tex. Crim. App. 1974) (quoting 23 Tex. Jur. 2d, Evidence, § 194, at pg. 294, for the proposition that the accused must be “shown to have been [the] perpetrator” of an extraneous offense before it can be admitted); *Fentis v. State*, 528 S.W.2d 590, 592 (Tex. Crim. App. 1975) (that accused committed extraneous misconduct “must be shown with some degree of certainty before evidence of [it] can come in”); *Tippins v. State*, 530 S.W.2d 110, 111 (Tex. Crim. App. 1975) (before the State may introduce evidence of extraneous misconduct, it must be “prepared to clearly prove that the accused committed” it); *Eanes v. State*, 546 S.W.2d 312, 315 (Tex. Crim. App. 1977) (echoing *Tomlinson* and *Landers*)).

thereto. *See* Tex. R. Evid. 401; *see also* *Montgomery v. State*, 810 S.W.2d 372, 391 (Tex. Crim. App. 1990) (en banc) (“Where the appellate court can say with confidence that by no reasonable perception of common experience can it be concluded that proffered evidence has a tendency to make the existence of a fact of consequence more or less probable than it would otherwise be, then it can be said the trial court abused its discretion to admit that evidence.”). Legally sufficient proof of Cassie’s kidnapping was introduced via Frank’s testimony that (1) he heard a loud sound that resembled a gunshot come from his home; (2) he saw Cassie being escorted out of the house between Appellant and Amalinh into the backseat of another car before it drove away; and (3) he then went into his home and saw Jimmy dying from a gunshot wound. The trial court abused its discretion when it overruled Appellant’s objection under Texas Rule of Evidence 402 to the introduction/admission of evidence of Cassie’s death.

While it is easy to imagine a connection between Appellant’s conduct and Cassie’s violent death, such ease is the precise reason for our well-established prohibition against introducing irrelevant evidence. *See* Bergman, Hollander & Duncan, Wharton’s Criminal Evidence § 1:2 (“These rules of exclusion stem from the concern that the jury would not be able to consider the evidence only for the purpose for which it is properly admitted.”); *see also* *Montgomery*, 810 S.W.2d at 391 (“Moreover, when it is clear to the appellate court that what was perceived by the trial court as common experience is really no more than the operation of a common prejudice, not borne out in reason, the trial court has abused its discretion. In either event the appellate court should recognize that the trial court erred to admit the proffered evidence, and proceed to determine harmfulness under Tex. R. App. Pro., Rule 81(b)(2).”).

Because Cassie’s death was irrelevant, it had no probative value; because

Cassie’s death involved violence and insufficient facts tending to prove Appellant’s culpability, it was inherently prejudicial. This prejudice was unfair and substantially outweighed the non-existent probative value of Cassie’s death relative to the charge alleged and the elements thereof. The dissent opines that “the danger of unfair prejudice was low”; we disagree and believe it was especially high, particularly given the insufficiency of the evidence of legal culpability for Cassie’s death.

Therefore, the trial court abused its discretion when it overruled Appellant’s objection under Texas Rule of Evidence 403. *See Montgomery*, 810 S.W.2d at 389 (“Once this objection is made, the trial court is called upon to weigh probativeness of the evidence against its potential for ‘unfair’ prejudice — that is, as the majority iterated on original submission, its ‘tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.’”) (citing Advisory Committee’s Note to Fed. R. Evid. 403); *see also id.* (“Indeed, the Fifth Circuit has commented that it reads the rule ‘to *require* exclusion when prejudice outweighs probative value.’”) (emphasis in original) (citing *United States v. Preston*, 608 F.2d 626, 639 n.16 (5th Cir. 1979)).

The dissent cites *Rogers v. State*, 853 S.W.2d 29, 32-33 (Tex. Crim. App. 1993) (en banc), for the proposition that “a reviewing court should not superimpose its own judgment over the judgment of the trial court when deciding whether extraneous-offense evidence is relevant”; we do not believe *Rogers* stands for the proposition cited. There, the Texas Court of Criminal Appeals (while examining a comparable question concerning relevancy relative to 404(b)) said:

While this Court is not necessarily convinced of the relevancy of the marijuana evidence under that argument, we will not “superimpose [our] own judgment as to relevance over that of the trial court.”

Id. at 32 (quoting *Montgomery*, 810 S.W.2d at 390).

In our view, the Court’s language in *Rogers* reveals that it refrained from imposing its judgment *in that case*; the Court did not say that (1) it could not superimpose its judgment of relevancy on the trial court or (2) *Montgomery* held (or even implied) otherwise. Indeed, in *Montgomery*, the Court simply says,

To the extent it suggests that an appellate court may always superimpose its own judgment as to relevance over that of the trial court, we reject this approach.

Montgomery, 810 S.W.3d at 391.

Therefore, we believe the dissent relies upon *Rogers* for a proposition that is not present therein.

B. This Error Affected Appellant’s Substantial Rights.

Generally, the erroneous admission of evidence is non-constitutional error that we analyze for harm under Texas Rule of Appellate Procedure 44.2(b). *See* Tex. R. App. P. 44.2(b); *Johnson v. State*, 967 S.W.2d 410, 417 (Tex. Crim. App. 1998). Rule 44.2(b) provides that an appellate court must disregard a non-constitutional error that does not affect a criminal defendant’s “substantial rights”. Tex. R. App. P. 44.2(b). A substantial right is affected when the error had a substantial and injurious effect or influence in determining the jury’s verdict. *Coble v. State*, 330 S.W.3d 253, 280 (Tex. Crim. App. 2010). Non-constitutional error is harmless if the improperly admitted evidence did not influence the jury or had but a slight effect upon its deliberations. *Id.* “If the reviewing court is unsure whether the error affected the outcome, that court should treat the error as harmful.” *Fox v. State*, 283 S.W.3d 85, 95 (Tex. App.—Houston [14th Dist.] 2009, pet. ref’d).

In performing this analysis, we examine the entire trial record and calculate, as much as possible, the probable impact of the error upon the rest of the evidence. *Id.*; *see also Torres v. State*, 424 S.W.3d 245, 260 (Tex. App.—Houston [14th Dist.]

2014, pet. ref'd). We analyze “any testimony or physical evidence admitted for the jury’s consideration, the nature of the evidence supporting the verdict, the character of the alleged error and how it might be considered in connection with other evidence in the case.” *Motilla v. State*, 78 S.W.3d 352, 357 (Tex. Crim. App. 2002). We also consider “overwhelming evidence supporting the particular issue to which the erroneously admitted evidence was directed, but that is only one factor in our harm analysis.” *Torres*, 424 S.W.3d at 260. The burden to demonstrate whether the appellant was harmed by a trial court error does not rest on either the appellant or the State. *Coble*, 330 S.W.3d at 280.

Here, we conclude the erroneous admission of evidence of Cassie’s murder affected Appellant’s substantial rights. The jury charge at the end of the guilt/innocence phase provided the jurors with six options for their verdict: not guilty; guilty of capital murder; guilty of murder; guilty of felony murder; guilty of aggravated kidnapping; and guilty of kidnapping. The jury found Appellant guilty of capital murder, and immediately thereafter the trial court sentenced Appellant to life without parole. Multiple times throughout the five-day trial, the State referenced Cassie’s death and manner of death, and introduced photographs into evidence of her dead body in connection with the kidnapping. Because the State so heavily relied upon Cassie’s death throughout its case against Appellant, we cannot separate the potential harm of those statements from what the jury may have believed about Appellant’s involvement in the State’s case for kidnapping Cassie and murdering her boyfriend. *See, e.g., Jackson v. State*, 320 S.W.3d 873, 887-890 (Tex. App.—Texarkana 2010, pet. ref’d) (at the defendant’s trial for capital murder, erroneous admission of evidence that the defendant committed a separate robbery was harmful error); *Booker v. State*, 103 S.W.3d 521, 537-540 (Tex. App.—Fort Worth 2003, pet. ref’d) (at the defendant’s trial for aggravated robbery, erroneous admission of

evidence that defendant committed aggravated kidnapping and aggravated assault as part of the same incident gave rise to harmful error).

Extraneous offense evidence can have a significant impact on the jury's rational disposition towards other evidence because of the jury's natural inclination to infer guilt to the charged offense from the extraneous offenses. *See Abdnor v. State*, 871 S.W.2d 726, 738 (Tex. Crim. App. 1994) (en banc); *Mayes v. State*, 816 S.W.2d 79, 86 (Tex. Crim. App. 1991) (en banc). And we cannot speculate what verdict the jurors might have decided upon without evidence of this extraneous act; it is entirely possible that they would have come to the same verdict without the improperly admitted extraneous evidence. But it is also possible that they would have decided upon a different verdict. This uncertainty renders the trial court's admission of evidence of Cassie's murder harmful error. *See Fox*, 283 S.W.3d at 95. Moreover, because the other offenses included in the jury charge carried sentences less than the life without parole sentence imposed on Appellant herein,⁴ we find the erroneous admission of this extraneous evidence to have been harmful.

CONCLUSION

We reverse the trial court's judgment and remand for a new trial.

⁴ Specifically, the other offenses included in the jury charge carried the following punishments: murder, felony murder, and aggravated kidnapping, as first-degree felonies, carried punishment ranges of five to 99 years' imprisonment. *See* Tex. Penal Code Ann. §§ 12.32, 19.02, 20.04. Kidnapping, as a third-degree felony, carries a punishment ranged of two to ten years' imprisonment. *Id.* §§ 12.34, 20.03.

/s/ Meagan Hassan
Justice

Panel consists of Justices Christopher, Bourliot, and Hassan (Christopher, J., dissenting).

Publish — Tex. R. App. P. 47.2(b).

APPENDIX B

Dissenting opinion, Justice Tracy Christopher, Fourteenth Court of Appeals

Inthalangsy v. State, __S.W.3d__, No. 14-08-00205-CR, 2020 WL 5667158 (Tex. App.—Houston [14th Dist.] Sept. 24, 2020, pet. filed) (Christopher, J., dissenting).

**Reversed and Remanded and Majority and Dissenting Opinions filed
September 24, 2020.**



In The
Fourteenth Court of Appeals

NO. 14-18-00205-CR

SANTHY INTHALANGSY, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 178th District Court
Harris County, Texas
Trial Court Cause No. 1471491**

DISSENTING OPINION

I agree with the majority that the evidence is sufficient to support the conviction, but I disagree with the majority's other decision regarding the admission of the extraneous murder.

The majority starts off on the wrong foot by not beginning its analysis with Rule 404 of the Texas Rules of Evidence. Subsection (b)(1) of that rule, sometimes known as the propensity rule, provides that evidence of an extraneous offense is not

admissible if the purpose of the evidence is to show that a person has a character trait and that the person acted in conformity with that character trait on a particular occasion. Subsection (b)(2) sets forth an exception to the propensity rule and provides that evidence of an extraneous offense may be admissible if it advances “another purpose.”

Several alternative purposes are enumerated under subsection (b)(2), such as the tendency of the evidence to prove an elemental fact like “intent.” The Court of Criminal Appeals has also recognized a separate purpose that was not specifically enumerated: to provide “same transaction contextual evidence.” *See Mayes v. State*, 816 S.W.2d 79, 86 (Tex. Crim. App. 1991). This sort of contextual evidence refers to those background situations where “several crimes are intermixed, or blended with one another, or connected so that they form an indivisible criminal transaction, and full proof by testimony, whether direct or circumstantial, of any one of them cannot be given without showing the others.” *Id.* at 86 n.4. The Court explained that this evidence is admissible under the exception to the propensity rule because “events do not occur in a vacuum and . . . the jury has a right to hear what occurred immediately prior to and subsequent to the commission of the act so that they may realistically evaluate the evidence.” *Id.* at 86.

These alternative purposes justified the admission of the extraneous murder in this case. The extraneous murder tended to prove that appellant had restrained Cassie without her consent when he escorted her away from Frank’s house, which was an essential element of the charged offense. The extraneous murder also supported a finding that appellant had formed an intent to prevent Cassie’s liberation by using deadly force against her, which was another elemental fact. And because there was evidence showing that Jimmy’s murder was intertwined with Cassie’s extraneous murder, the trial court could have reasonably concluded that the jury was

entitled to hear the extraneous murder as same transaction contextual evidence. *See Camacho v. State*, 864 S.W.2d 524, 531–32 (Tex. Crim. App. 1993) (holding that the trial court did not abuse its discretion by admitting evidence of certain extraneous murders and kidnappings because the evidence helped to establish the defendant’s intent and because the evidence imparted “information essential to understanding the context and circumstances of events which, although legally separate offenses, [were] blended or interwoven”).

The majority acknowledges that the connection between Jimmy’s murder and Cassie’s extraneous murder is “easy to imagine,” but the majority holds that the extraneous murder is wholly irrelevant because there is no clear proof that appellant participated in it. The majority achieves this holding by not crediting the reasonable inferences that may be drawn from the circumstantial evidence, in direct contravention of the standard of review. There was clear proof that appellant had kidnapped Cassie twice in a single week; that he or Amalinh had shot Jimmy in her presence just before her second kidnapping; and that Cassie was found deceased the day after Jimmy’s murder, also the result of a shooting. Reasonable minds could determine from this circumstantial evidence that appellant participated in Cassie’s murder, which means that this court should not disturb the trial court’s implied finding that the extraneous murder was relevant. *See Rogers v. State*, 853 S.W.2d 29, 32–33 (Tex. Crim. App. 1993) (op. on reh’g) (stating that a reviewing court should not superimpose its own judgment over the judgment of the trial court when deciding whether extraneous-offense evidence is relevant).

Because the majority determines that the extraneous murder was irrelevant, the majority does not perform a meaningful analysis under Rule 403 to assess whether the probative value of the extraneous murder substantially outweighed the danger of unfair prejudice. I will conduct that analysis here because it is essential to

showing that the trial court did not abuse its discretion by admitting the challenged evidence.

When undertaking a Rule 403 analysis, a trial court must balance (1) the inherent probative force of the proffered item of evidence with (2) the proponent's need for that evidence against (3) any tendency of the evidence to suggest decision on an improper basis, (4) any tendency of the evidence to confuse or distract the jury from the main issues, (5) any tendency of the evidence to be given undue weight by a jury that has not been equipped to evaluate the probative force of the evidence, and (6) the likelihood that presentation of the evidence will consume an inordinate amount of time or merely repeat evidence already admitted. *See Gigliobianco v. State*, 210 S.W.3d 637, 641–42 (Tex. Crim. App. 2006).

The trial court here did not make a record of any findings and conclusions under Rule 403, but no such record was actually required. *See Williams v. State*, 958 S.W.2d 186, 195 (Tex. Crim. App. 1997). This court presumes that the trial court engaged in a Rule 403 analysis when it admitted the challenged evidence over appellant's objection. *Id.* And in reviewing that decision, this court must also presume that the challenged evidence was admissible. *See Hammer v. State*, 296 S.W.3d 555, 568 (Tex. Crim. App. 2009) (“Under Rule 403, it is presumed that the probative value of relevant evidence exceeds any danger of unfair prejudice.”).

The trial court could have reasonably determined that there was high probative value in the evidence of Cassie's extraneous murder. As explained above, the extraneous murder supported findings that appellant restrained Cassie without her consent and that he intended to prevent her liberation with the use of deadly force, both of which were elements in the underlying kidnapping. The trial court could have also determined that the prosecution had a need for this evidence because the limited eyewitness testimony did not establish any obvious uses of force during the

initial stages of the kidnapping. For instance, the eyewitnesses did not testify that Cassie was dragged to the waiting car, or even that she was touched by her kidnappers. The extraneous murder was therefore important to establishing that Cassie was still taken against her will.

The trial court could have likewise determined that the danger of unfair prejudice was low. Because Cassie's extraneous murder was inextricably connected with her kidnapping and with Jimmy's murder, the trial court could have reasonably concluded that the extraneous murder would not distract the jury from the main issues in the case.

The trial court could have also determined from the quality of the evidence that the extraneous murder would not have a tendency to affect the jury in an irrational way. There were no photographs from Cassie's autopsy. There were some photographs from the scene where her body was discovered, but those photographs were captured from afar and did not depict Cassie's face or her many gunshot wounds, as her body was almost entirely obscured by vegetation. The prosecution accordingly minimized the risk of inflaming the jury's passions.

Even though the prosecution called several witnesses and spent some time in developing the evidence of Cassie's extraneous murder, the trial court could have reasonably determined from the remaining factors that the probative value of that evidence outweighed any danger of unfair prejudice.

For all of these reasons, I would conclude that the trial court did not abuse its discretion by admitting the challenged evidence. I would overrule appellant's arguments to the contrary and consider his remaining issues on appeal. Because the majority does not, I respectfully dissent.

/s/ Tracy Christopher
Justice

Panel consists of Justices Christopher, Bourliot, and Hassan. (Hassan, J., majority).

Publish — Tex. R. App. P. 47.2(b).

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